BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

STEVEN C. ANDERSON	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,040,827
H2 DRILLING, LLC	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appealed the January 6, 2009, Order Denying Medical Treatment entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

This is the second time this claim has come before the Board on claimant's request for preliminary hearing benefits. Previously, claimant was denied preliminary hearing benefits because he failed to prove how he had sustained his alleged work-related injuries.

But now there is no dispute that claimant was injured on May 19, 2008, as the result of a fight with his supervisor, Mike Cavender. In the January 6, 2009, Order Denying Medical Treatment, Judge Fuller denied claimant's request for benefits as claimant had failed to prove his accident occurred in the course of his employment with respondent. The Judge wrote, in part:

> The Claimant must show that his injury arose out of and in the course of his employment. "In the course of his employment" relates to the time, place and circumstances of the accident and that means that the injury happened while the worker was at work in the employer's service. It is clear that the Claimant's work for the day was completed. The accident did not occur on the job site. The accident and resulting injuries were from a physical altercation. From the Claimant's own testimony, he shoved Mr. Cavender and the physical altercation continued from there. The Claimant instigated the physical altercation which up to that point had only been a verbal one. This court [cannot] find that the Claimant's

> injuries occurred in the course of his employment. The requested benefits shall be denied.[1]

The only issue on this appeal is whether claimant's May 19, 2008, accident arose out of and in the course of his employment with respondent. Claimant argues that his accident is compensable under the Workers Compensation Act as his argument with Mr. Cavender arose out of his employment. Claimant also maintains that his accident occurred in the course of his employment as travel was required in his job and the fight with Mr. Cavender occurred at a motel where claimant's drilling crew was staying. Claimant argued in pertinent part:

> The bottom line is that working on an oil field crew as the claimant was doing at the time of his injury involves a lot of travel and since the employer was providing the travel, the hotel room, and had the driller supervisor for claimant pick up claimant and return claimant to his home from the drilling site where claimant worked, the trip claimant was on and discussions surrounding this trip are all part of claimant's work for employer and any injury as a result therefrom is a compensable workers' compensation claim and the required analysis is to view the trip as one undivisible *[sic]* trip which should mean that any injury during any part of that trip is compensable.[2]

Respondent, however, argued during the first appeal that claimant's accident did not stem from an argument incidental to his work. Instead, respondent initially maintained the fight was due to a disagreement over a personal matter.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member finds and concludes:

Claimant worked for respondent on a drilling crew. The morning of May 19, 2008, Mike Cavender, the crew's driller, picked up claimant at his home in Great Bend, Kansas, and took him with two other crew members to a drilling site near Oakley, Kansas.

Mr. Cavender decides whether the crew will return home at the end of the day or whether they will stay overnight at a motel. Most of the time Mr. Cavender drove the crew members back home. Nonetheless, on May 19, 2008, which happened to be claimant's birthday, Mr. Cavender decided the crew would stay overnight at an Oakley motel.

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[1] ALJ Order Denying Medical Treatment (Jan. 6, 2009) at 1, 2.

[2] Claimant's Letter (Sept. 17, 2008) at 3.

Only claimant has testified in this claim. And claimant's testimony is uncontradicted at this juncture that he had a doctor's appointment and an appointment with his probation officer on May 20, 2008, and that Mr. Cavender had agreed to take him back to Great Bend for those appointments. What is more, claimant's testimony is uncontradicted that he got into a fight with Mr. Cavender the evening of May 19, 2008, over whether Mr. Cavender would pick up claimant and drive him back to the job site the morning following his appointments.

CONCLUSIONS OF LAW

The Workers Compensation Act is to be liberally construed for purposes of bringing employees and employers within the provisions and protections of the Act.[3]

For an accident to arise out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.[4] The requirement that the accident occur in the course of employment relates to the time, place, and circumstances under which the accident occurred and means the accident happened while the worker was working for the employer.[5] In *Newman*, the Kansas Supreme Court held:

> The two phrases, arising "out of" and "in the course of" the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidents of the employment.[6]

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[3] See K.S.A. 2007 Supp. 44-501(g).

[4] See *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979); *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973); and *Martin v. U.S.D. No. 233*, 5 Kan. App. 2d 298, 615 P.2d 168 (1980).

[5] See *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197-198, 689 P.2d 837 (1984).

[6] *Newman*, 212 Kan. 562, Syl. ¶ 1.

And whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case.[7]

When travel is an integral part of a worker's employment "the entire undertaking is to be considered from a unitary standpoint rather than divisible."[8] What is more,

> [e]mployees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.[9]

If a worker is injured in a dispute with another employee over the conditions and incidents of the employment, then the injuries are compensable under the Workers Compensation Act.[10] But for an assault stemming from purely personal matters to be compensable, the worker must prove either the injuries sustained were exacerbated by an employment hazard,[11] or the employer had reason to anticipate that injury would result if the co-workers continued to work together.[12] What is more, the Kansas Court of Appeals in *Springston*[13] held that injuries from an assault by a co-worker were compensable although the injured worker was the aggressor.

> If an injury by assault arose out of and in the course of employment, it is compensable without regard to whether the claimant was the aggressor in the confrontation.[14]

The undersigned Board Member concludes the fight between claimant and his supervisor arose out of claimant's employment as it pertained to claimant's travel back to

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[7] *Id.*, Syl. ¶ 3, citing *Carter v. Alpha Kappa Lambda Fraternity*, 197 Kan. 374, 417 P.2d 137 (1966).

[8] See *Blair v. Shaw*, 171 Kan. 524, 529, 233 P.2d 731 (1951).

[9] 2 *Larson's Workers' Compensation Law* § 25.01 (2008).

[10] See *Springston v. IML Freight, Inc.*, 10 Kan. App. 2d 501, 506-507, 704 P.2d 394, *rev. denied* 238 Kan. 878 (1985).

[11] *Baggett v. B & G Construction*, 21 Kan. App. 2d 347, 900 P.2d 857 (1995).

[12] *Harris v. Bethany Medical Center*, 21 Kan. App. 2d 804, 909 P.2d 657 (1995).

[13] *Springston*, 10 Kan. App. 2d 501.

[14] *Id.*, Syl. ¶ 3.

the work site the day following his scheduled doctor's appointment. Because travel was required for the drilling crew to reach the various temporary sites where they worked, the trip to and from those sites should be considered indivisible. Moreover, because claimant's travel is indivisible the fight occurred in the course of employment.

In conclusion, the injuries claimant sustained on May 19, 2008, arose out of and in the course of his employment with respondent. Consequently, the January 6, 2009, Order Denying Medical Treatment should be reversed and this claim remanded to the Judge to address claimant's request for benefits. In short, claimant is entitled to receive workers compensation benefits for the injuries he sustained on May 19, 2008, when his supervisor either threw or knocked claimant from a motel balcony.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[15] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member reverses the January 6, 2009, Order Denying Medical Treatment and remands this claim to the Judge to address claimant's request for preliminary hearing benefits. The Board does not retain jurisdiction over this claim.

IT IS SO ORDERED.

Dated this ____ day of March, 2009.

KENTON D. WIRTH
BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
John David Jurcyk, Attorney for Respondent and its Insurance Carrier
Pamela J. Fuller, Administrative Law Judge

[15] K.S.A. 44-534a.